



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2004

Ms. Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2004-2963

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 199921.

The Texas Board of Chiropractic Examiners (the "board") received a request for all files relating to a named chiropractor. You state that you are releasing some of the requested information to the requestor. However, you claim that the submitted information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information must be withheld under sections 552.026 and 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the Public Information Act in accordance with FERPA. This office generally applies the same analysis under section 552.114 and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g(b)(1); *see also* Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational

agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Thus, FERPA and section 552.114 govern the availability of student or education records held by educational agencies or institutions. *See* 20 U.S.C. § 1232g(b)(1); Gov't Code §§ 552.026, 552.114. FERPA generally does not govern access to records in the custody of governmental bodies that are not educational agencies or institutions. *See* Open Records Decision No. 390 at 3 (1983). An exception to this rule applies if the governmental body received the records from an educational agency under written consent of the student. 20 U.S.C. 1232g(b)(4)(B). You do not indicate, nor does it appear, that the submitted information was received from an educational agency or institution pursuant to the written consent of the student. However, if the board received the information from an educational agency with the written consent of the student it must be withheld under FERPA. Otherwise, the information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 199921

Enc: Submitted documents

c: Ms. Phyllis Michaelis
Kassabian, Doyle & Weatherford
1521 North Cooper Street, Suite 650
Arlington, Texas 76011
(w/o enclosures)